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22-051

March 2023

LB 1014e Section 51: Reverse Osmosis

The American Rescue Plan Act of 2021 (ARPA) was signed into law by the President on March 11, 2021. The State of Nebraska was allocated \$1.04 billion of Coronavirus State Fiscal Recovery Funds, which in part may be used to make necessary investments in water and sewer infrastructure. In the final rule adopted for implementation of these funds, the U.S. Department of the Treasury aligned the eligible uses of these funds with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF). In Nebraska, the SRF programs are administered by Nebraska Department of Environment and Energy (NDEE).

Signed into law by Governor Pete Ricketts on April 13, 2022, Section 51 of Legislative Bill No. 1014e states that these funds are “...for grants for reverse osmosis systems, which shall only be used for such purpose”. The narrative of the legislation further clarified that the NDEE “...shall provide grants for villages and cities of the second class to install reverse osmosis systems in community water systems where drinking water test levels are above ten parts per million of nitrate and, if appropriate, provide grant funds for use to install reverse osmosis systems if test levels for nitrate in drinking water pumped from private wells are above ten parts per million”.

Reverse Osmosis treatment to remove nitrates from drinking water is eligible for assistance under the DWSRF, and therefore under ARPA. The ARPA final rule states that eligible projects can also include rehabilitation of private wells, testing initiatives to identify contaminants in wells, and treatment activities and remediation strategies that address contamination.

Total Funding Amounts: \$4,000,000

Public Water Systems: \$2,800,000

Property Owners: \$1,200,000

Period of Availability: *See requirements under specific programs below.*

Who is Eligible:

- Villages and Cities of the Second Class (population 5,000 or below) with a community water system where drinking water test levels are above ten parts per million (10 ppm) of nitrate.
- Property owners of private wells with drinking water test levels above 10 ppm of nitrate.^{[1][2]}

¹ To ensure that these funds provide a benefit to public health, private wells must be registered with the Nebraska Department of Natural Resources.

² Private wells constructed in pits or using a sandpoint method of installation will be excluded from consideration due to the increased potential for coliform bacteria to be present in the well.

Eligible uses of funds:

- Reverse Osmosis treatment to remove nitrates from drinking water.
- Testing initiatives to identify contaminants in wells.

Application Procedure for Community Public Water Systems (\$2,800,000 Total)**Funding Amount: To be determined as part of ranked choice evaluation process****Period of Availability: Application period closes September 30, 2022, with contracts for construction needed by September 30, 2024, with substantial completion of construction by September 30, 2026**

- Must submit a needs survey form to the SRF Section at NDEE by September 30, 2022. Forms will be mailed out to all potentially eligible entities by July 22, 2022, based on the last five years of testing data from the Department's Safe Drinking Water Information System (SDWIS). SDWIS is the database of record for implementing Nebraska's Safe Drinking Water Act and all system testing results indicating nitrates above 10 ppm are presently known.
- Cost impacts of operation and maintenance for any potential awardee will also be evaluated to ensure that the local government entity is capable of meeting all technical, financial and managerial aspects of operating a Reverse Osmosis treatment plant without unreasonable costs being placed on its residents. Preference may be given to those communities that have completed water studies of their system.

The NDEE will publicly notice the proposed list of community public water systems eligible for Section 51 ARPA assistance for comment. After resolution of any comments received, the selected applicants will be required to submit planning documents meeting the requirements of Title 179 – Public Water Systems, Chapter 7 – Siting, Design and Construction of Public Water Systems, and where applicable, those noted in the “Recommended Standards for Water Works”, 2007 Edition. These standards are required of all public water system projects in the state.

The NDEE will enter into a contract with the community(ies) to provide the authorized grant assistance up to the \$2,800,000 for State Fiscal Year 2022-23 authorized in Section 51 of LB1014e. The contract will contain provisions to ensure the funds meet the requirements of ARPA noted in the U.S. Department of Treasury State and Local Fiscal Recovery Funds Final Rule ([SLFRF-Final-Rule.pdf \(treasury.gov\)](#)), notably the Compliance and Reporting guidance ([SLFRF Compliance and Reporting Guidance \(treasury.gov\)](#)). Additional information may be found at [SLFRF-Final-Rule-FAQ.pdf \(treasury.gov\)](#). Projects must be completed in accordance with Title 179 – Chapter 7, to confirm all state laws will be met. Those requirements will ensure nitrate levels in public water systems owned by Villages and Cities of the Second Class are reduced to concentrations below 10 ppm in drinking water. Should any of the contracts with the selected applicants exceed \$1 million in capital expenditures, written justification must be completed in accordance with the State and Local Fiscal Recovery Funds Final Rule but is not required to be submitted to the U.S Treasury. (Page 201 of ARPA Final Rule)

The contracts will contain a clause that all work must be under contract for construction by September 30, 2024, for substantial completion by September 30, 2026. Should the contract date be missed by communities, funds will be re-allocated to other awarded projects determined by the Department to best meet the ARPA required dates of under contract by December 31, 2024, and construction completed by December 31, 2026, respectively.

Procedure for Property Owners

Funding Amount: Up to \$4,000 per small treatment installations via rebates

Period of Availability: The initial application period opened January 1, 2023 and closed March 31, 2023 with installations needing to be completed by September 30, 2024. Upon reaching the initial close date of March 31, 2023, funding for the rebate program remained. As of April 2023, applications will be accepted and reviewed for consideration on a month-to-month basis with any submitted applications given equal consideration should funding remain in any given month. Work still may not begin until an agreement is signed with the NDEE; installations need to be completed by September 30, 2024.

- Property owners will be eligible for rebates for small treatment installations, those effective for the removal of nitrates above 10 ppm. Minimum requirements for any treatment device are presented in Appendix A below. Should applications exceed funding amounts, ranking will be based on concentration of nitrate.
- Information on the rebate program and applications for assistance will be made available at <http://dee.ne.gov/> – only complete applications will be accepted to maintain compliance with ARPA requirements. A directional video to assist the public with the application process will be posted on the RO rebate webpage.
- Property owners seeking rebates will have to submit water quality data from the State laboratory, with testing results dated no earlier than January 1, 2022, and a cost estimate from a licensed plumber, or from an entity that has performed at least five successful Private Well Reverse Osmosis Small Water Treatment installations, for the installation of a reverse osmosis treatment device certified by the American National Standards Institute, to and for pre-approval by the NDEE. Testing is available to any private citizen in the state at <https://www.nebraska.gov/dhhs/water-test-kits/private.html>.
- Following pre-approval, the property owner must submit adequate documentation of the treatment installation, including but not limited to proof of treatment device purchase and certified statement of and/or photographs of installation. Rebates for 100% of the device purchase and installation cost up to \$4,000 will be processed by NDEE, which can also include costs for testing.

For this rebate program the NDEE will be responsible for documenting that the requirements of ARPA noted in the U.S. Department of Treasury State and Local Fiscal Recovery Funds Final Rule ([SLFRF-Final-Rule.pdf \(treasury.gov\)](#)), and notably those in the Compliance and Reporting guidance ([SLFRF Compliance and Reporting Guidance \(treasury.gov\)](#)) are met. By relying on a licensed plumber, or an entity that has performed at least five successful Private Well Reverse Osmosis Small Water Treatment Installations, all state and local laws will be met. The requirements in Appendix A will ensure nitrate levels in drinking water from private wells are reduced to concentrations below 10 ppm.

ARPA funds must be under contract/purchase order for installation by the end of 2024. Therefore, the application window will close on June 30, 2024, with installations needing to be completed by September 30, 2024. Any excess rebate program funds would be transferred to ongoing Community Public Water System projects.

Appendix A

PRIVATE WELL INSTALLATION REQUIREMENTS

- a. **Treatment Systems Certification** - Systems that are American National Standards Institute (ANSI) certified (National Sanitation Foundation, Water Quality Association, or Underwriters Laboratories) for removal of nitrates, and provide proof of that certification to the Department.
- b. **Performance Indication Device** - All devices must have a performance indication device (PID) which alerts the user when the device is no longer meeting treatment standards, and be calibrated to signal the customer prior to the device reaching its exhaustion stage.
- c. **Confirmation Testing** – After installation, all devices will have a sample collected from and tested for nitrates at the State Laboratory. The results will be submitted to the Department.